



[7590-01-P]

NUCLEAR REGULATORY COMMISSION

[Docket Nos.: 52-034 and 52-035; NRC-2008-0594]

Luminant Generation Company, LLC

**Combined License Application for Comanche Peak Nuclear Power Plant, Units 3 and 4
Exemption**

1.0 BACKGROUND:

Luminant Generation Company, LLC. (Luminant) submitted to the U.S. Nuclear Regulatory Commission (NRC) Combined License (COL) Applications for two United States - Advanced Pressurized Water Reactors (US-APWR) in accordance with the requirements of Part 52 of Title 10 of the *Code of Federal Regulations* (10 CFR), Subpart C, "Licenses, Certifications, and Approvals for Nuclear Power Plants." These reactors will be identified as Comanche Peak Nuclear Power Plant (CPNPP), Units 3 and 4, and are located at the existing Comanche Peak site in Somervell County, Texas. The NRC docketed the application on December 2, 2008, and is currently performing a review of the application. In addition, the NRC is currently performing a detailed review of the Mitsubishi Heavy Industries, Ltd. application for the design certification of the US-APWR.

2.0 REQUEST/ACTION:

The regulations specified in 10 CFR 50.71(e)(3)(iii) require that an applicant for a COL under Subpart C of 10 CFR Part 52 shall, during the period from docketing of a COL application, until the Commission makes a finding under 10 CFR 52.103(g) pertaining to facility operation, submit an annual update to the application's Final Safety Analysis Report (FSAR), which is a part of the application.

Luminant submitted COL application, FSAR, Revision 3, on June 28, 2012. Pursuant to 10 CFR 50.71(e)(3)(iii), the next annual update (COL application, FSAR, Revision 4) would be due in June 2013. Luminant has requested a one-time exemption from the requirements of 10 CFR 50.71(e)(3)(iii) to allow for the submittal of COL application, FSAR, Revision 4, on or before November 30, 2013.

In summary, the requested exemption is a one-time schedule change from the requirements of 10 CFR 50.71(e)(3)(iii). The exemption would allow Luminant to submit the FSAR update (Revision 4) on or before November 30, 2013, and to submit the subsequent FSAR update (Revision 5) by November 2014. The FSAR update schedule could not be changed, absent the exemption. Luminant requested the exemption by letter dated January 28, 2013, (Agencywide Documents Access and Management System (ADAMS) accession number ML13031A041).

3.0 DISCUSSION:

Pursuant to 10 CFR 50.12, the NRC may upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, including Section 50.71(e)(3)(iii) when: (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) special circumstances are present. As relevant to the requested exemption, special circumstances exist if: (1) "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule" (10 CFR 50.12(a)(2)(ii)); (2) "Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated"

(10 CFR 50.12(a)(2)(iii)); or (3) “The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation” (10 CFR 50.12(a)(2)(v)).

The US-APWR Design Control Document (DCD) and the CPNPP, Units 3 and 4, COL application FSAR are currently undergoing NRC staff review. Because the COL application FSAR is directly linked to the US-APWR DCD, many DCD changes require an associated change to the COL application FSAR. The committed changes for both the US-APWR DCD and the COL application FSAR are consolidated into a revision for the COL application, which is periodically submitted to the NRC. Thus, the optimum time to prepare a revision to the COL application FSAR is shortly after a DCD revision has been submitted. To prepare and submit a COL application FSAR update midway between DCD revisions would require significantly more time and effort. Luminant would need to identify all committed changes to the DCD since the last US-APWR revision in order to create a COL application FSAR revision that accurately and completely reflects the committed changes to the US-APWR DCD, made since the last DCD revision.

The requested one-time exemption to incorporate US-APWR DCD, Revision 4, into the CPNPP COL application FSAR update would provide only temporary relief from the regulations of 10 CFR 50.71(e)(3)(iii). Luminant has made good faith efforts to comply with 10 CFR 50.71(e)(3)(iii) by maintaining a “living” COL application, in which Luminant continuously incorporates changes resulting from its responses to requests for additional information (RAIs), commitments, or other identified changes. Luminant has also submitted proposed changes to the COL application FSAR pages along with responses to NRC RAIs. Additionally, Luminant has periodically submitted Updated Tracking Reports, which provide changes to the COL application FSAR that reflect changes to the COL application FSAR.

Authorized by Law:

The exemption is a one-time schedule exemption from the requirements of 10 CFR 50.71(e)(3)(iii). The exemption would allow the applicant to submit the CPNPP, Units 3 and 4, COL Application FSAR annual update scheduled for June 2013, on or before November 30, 2013, and to submit the subsequent FSAR annual update in November 2014. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions. The NRC staff has determined that granting Luminant the requested one-time exemption from the requirements of 10 CFR 50.71(e)(3)(iii) will provide only temporary relief from this regulation and will not result in a violation of the Atomic Energy Act of 1954, as amended, or the NRC's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety:

The underlying purpose of 10 CFR 50.71(e)(3)(iii) is to provide for a timely and comprehensive update of the FSAR associated with a COL application in order to support an effective and efficient review by the NRC staff and issuance of the NRC staff's safety evaluation report. The requested exemption is solely administrative in nature, in that it pertains to the schedule for submittal to the NRC of revisions to an application under 10 CFR Part 52, for which a license has not been granted.

Based on the above, no new accident precursors are created by the exemption; thus, the probability of postulated accidents is not increased. Also, based on the above, the consequences of postulated accidents are not increased. Therefore, there is no undue risk to public health and safety.

Consistent with Common Defense and Security:

The requested exemption would allow Luminant to submit the FSAR annual update (Revision 4) scheduled for June 2013, on or before November 30, 2013, and to submit the subsequent FSAR annual update in November 2014. This schedule change has no relation to security issues.

Therefore, the common defense and security is not impacted by this exemption.

Special Circumstances:

Special circumstances, in accordance with 10 CFR 50.12(a)(2), are present whenever:

(1) "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule"

(10 CFR 50.12(a)(2)(ii)); (2) "Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated" (10 CFR 50.12(a)(2)(iii)); or

(3) "The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation" (10 CFR 50.12(a)(2)(v)).

The underlying purpose of 10 CFR 50.71(e)(3)(iii) is to provide for a timely and comprehensive update of the FSAR associated with a COL application in order to support an effective and efficient review by the NRC staff and issuance of the NRC staff's safety evaluation report. As discussed above, the requested one-time exemption is solely administrative in nature, in that it pertains to a one-time schedule change for submittal of revisions to an application under 10 CFR Part 52, for which a license has not been granted. The requested one-time exemption will permit Luminant time to carefully review Revision 4 of the US-APWR DCD and fully incorporate DCD revisions into a comprehensive update of the CPNPP, Units 3 and 4, FSAR associated with the COL application. This one-time exemption will support the NRC staff's effective and efficient review of the COL application and issuance of the safety evaluation report, and therefore does not affect the underlying purpose of 10 CFR 50.71(e)(3)(iii). Because the application of 10 CFR 50.71(e)(3)(iii) in the particular circumstances is not necessary to achieve the underlying purpose of that rule; granting a one-time exemption from 10 CFR 50.71(e)(3)(iii) would provide only temporary relief; and Luminant has made good faith efforts to comply with the regulation, the special circumstances required by 10 CFR 50.12 (a)(2) for the granting of an exemption from 10 CFR 50.71(e)(3)(iii) exist.

4.0 CONCLUSION:

Accordingly, the NRC has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law and will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the NRC hereby grants Luminant a one-time exemption from the requirements of 10 CFR 50.71(e)(3)(iii) pertaining to the CPNPP, Units 3 and 4, COL application to allow the submittal of the FSAR update scheduled for June 2013, on or before November 30, 2013, and to submit the subsequent FSAR annual update in November 2014.

Pursuant to 10 CFR 51.32, the NRC has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (78 FR 25486).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 8th day of May 2013.

FOR THE NUCLEAR REGULATORY COMMISSION

Samuel Lee, Chief
Licensing Branch 2
Division of New Reactor Licensing
Office of New Reactors

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